

HERBERT A. HORTON

IBLA 81-584

Decided May 12, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring the Tracks End #1 through Tracks End #4 mining claims (N MC-36061 through N MC-36064) abandoned and void.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirement of the statute unless the evidence is actually received by the proper BLM office before such date.

APPEARANCES: Herbert A. Horton, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Herbert A. Horton appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated March 25, 1981, declaring the Tracks End #1 through Tracks End #4 mining claims, N MC-36061 through N MC-36064,

abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claims by December 30, 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. BLM declared the claims abandoned and void because neither of the required documents was filed by December 30, 1979. The claims were located on July 24, 1978, and filed for recordation with BLM on October 24, 1978.

On appeal appellant asserts that all his assessment papers were sent to the BLM office in the fall of 1979 or earlier. Appellant enclosed a copy of the 1979 proof of labor which had been recorded in Humboldt County, Nevada. However, he submitted no proof that it was filed with BLM.

[1] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file either of the required instruments is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Accordingly, appellant was required to file evidence of assessment work or a notice of intention to hold the claim by December 30, 1979. When appellant failed to file timely either of these documents, BLM properly held the claims to be abandoned and declared them void. Kay M. Krebs, 62 IBLA 84 (1982); James G. Robinson, 60 IBLA 134 (1981). Compliance with FLPMA and the pertinent regulations is mandatory, and this Board is not empowered to make exceptions to the requirements of the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] Appellant contends that a copy of his proof of labor was mailed in the fall of 1979 or earlier. The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Kay M. Krebs, *supra*; Everett Yount, 46 IBLA 74 (1980). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Also, we note that appellant failed to file a copy of the official record of his notice of location with BLM within 90 days after the date of location, as prescribed by section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976). Failure to file a notice of location timely is considered conclusively to constitute abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. BLM should have rejected the filings and declared the claims void when they were submitted for recordation on the 92nd day after location. See Del Rupp, 57 IBLA 297 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Gail M. Frazier  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

